

Message

From: Moraff, Kenneth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6170EF3BAEF40C3BDECAB56FD74B07A-MORAFF, KENNETH]
Sent: 10/28/2020 8:47:12 PM
To: R1_WD_Managers_SG [R1_WD_Managers_SG@epa.gov]
Subject: FW: OW-The Morning Insider : 10/28/20

From: Varnado, Miriam <Varnado.Miriam@epa.gov>
Sent: Wednesday, October 28, 2020 1:41 PM
To: Water Program Contact List - Directors <Water_Program_Contact_List__Directors@epa.gov>
Cc: Water Program Contact List - Deputy Directors <Water_Program_Contact_List__Deputy_Directors@epa.gov>; Jones, Erica <Jones.Erica@epa.gov>; Looper, Catherine <Looper.Catherine@epa.gov>; Marcus, Pam <marcus.pam@epa.gov>
Subject: FW: OW-The Morning Insider : 10/28/20

Hello All,

FYI...see below.

Regards,

Miriam

Miriam Varnado

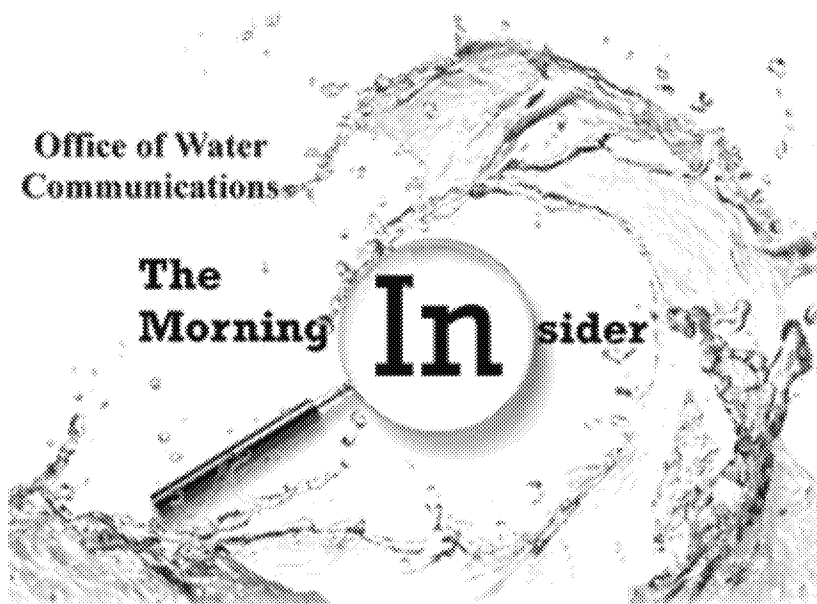
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Subject: FW: OW-The Morning Insider

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Subject: OW-The Morning Insider



October 28, 2020

NEWS

Inside EPA: District Court Judge Grants EPA's Request To Stay Perchlorate Litigation

A federal district court judge is granting EPA's request to stay litigation over whether the agency can terminate a consent decree that required it to set a drinking water standard for the rocket fuel ingredient perchlorate until an appeals court rules on whether EPA had the authority to decide no national standard is necessary.

Inside EPA: Environmentalists press 9th Circuit to dismiss nutrients case as moot

Environmentalists in Montana are reiterating their argument that EPA and the state's appeal of a closely watched nutrients water quality standards case is moot, but that if the federal appeals court overseeing the suit decides to rule on the merits, it should find that water quality standards cannot be based on cost.

The State Journal-Register: EPA announces \$113 million for Illinois water infrastructure

Using City Water, Light and Power's lead service pipe replacement project as a backdrop, officials from the U.S. Environmental Protection Agency on Tuesday announced more than \$113 million to modernize water infrastructure in Illinois.

Pacific Business News: Hawaii awarded \$23.3M to protect, improve water infrastructure

Hawaii was awarded more than \$23.3 million in federal funding from the United States Environmental Protection Agency to protect and support the state's water infrastructure, EPA officials announced Monday.

FULL ARTICLE

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A federal district court judge is granting EPA's request to stay litigation over whether the agency can terminate a consent decree that required it to set a drinking water standard for the rocket fuel ingredient perchlorate until an appeals court rules on whether EPA had the authority to decide no national standard is necessary.

In an Oct. 27 decision in *Natural Resources Defense Council (NRDC) v. EPA*, Judge Edgardo Ramos of the U.S. District Court for the Southern District of New York notes that NRDC would prefer the district court make a final ruling on the merits before the U.S. Court of Appeals for the District of Columbia Circuit determines whether EPA can forgo setting a perchlorate standard.

But Ramos concludes that both NRDC and EPA's arguments in the district court case depend on knowing whether EPA's decision to forgo a perchlorate standard is valid -- a decision that under the Safe Drinking Water Act (SDWA) can only be decided by the D.C. Circuit -- and therefore he is granting the agency's request for a stay.

The district court case stems from a deadline suit that NRDC won and which led to a 2016 consent decree that set out a schedule for EPA to issue a proposed and final maximum contaminant level goal (MCLG) and enforceable requirements known as national primary drinking water regulations (NPDWR) for perchlorate.

But EPA, after first proposing an NPDWR, announced in June that federal regulation of perchlorate in drinking water is unnecessary because water systems have sufficiently lowered the chemical's occurrence in the water supply. The agency then asked the district court to terminate the consent decree, saying it lacks authority to set an MCLG and NPDWR for perchlorate in light of its determination that no standard is necessary.

NRDC opposes EPA's efforts to terminate the consent decree and at the same time is challenging the agency's June determination in the D.C. Circuit in a case called *NRDC v. Wheeler*, but has asked the appeals court to stay its proceedings until a merits decision from the district court. EPA has asked the D.C. Circuit to reject the stay request.

Ramos says both NRDC's motion seeking enforcement of the 2016 consent decree and EPA's motion seeking a stay of proceedings are predicated on the validity of EPA's 2020 determination, an inquiry that is beyond the district court's jurisdiction under SDWA.

"The NRDC asks this Court to enforce the consent decree as though the 2020 Determination does not exist, but for better or worse it does. The EPA urges this Court to instead terminate the consent decree because the 2020 Determination marks a change in circumstances warranting modification under Rule 60(b)(5) or good cause under the consent decree, but the D.C. Circuit may determine it is invalid," Ramos writes.

In the face of these circumstances, EPA argues a stay pending decision in *Wheeler* would preserve judicial economy while NRDC counters that it would be prejudiced by a stay given the length of time that EPA has

already delayed regulation and the length of time cases pend before the D.C. Circuit, and that EPA would not be prejudiced because briefing is complete in the district court.

‘Necessary’ Decision

Ramos says NRDC is correct that it has been almost 10 years since the Obama administration issued a determination in 2011 that a perchlorate drinking water standard was warranted, but notes that it has only been four months since EPA was expected to promulgate an MCLG and an NPDWR under the consent decree.

“Of course, the public has an interest in safe drinking water, but the public also has an interest in well-reasoned regulation and efficient use of the courts. Resolution of *Wheeler* prior to resolution of the motions before this Court is not only more efficient, but necessary to arrive at the right answer,” Ramos says.

Therefore, the district court stays its case pending the D.C. Circuit’s decision in *Wheeler*.

NRDC had also requested the district court direct EPA to issue a final MCLG and NPDWR, and modify the consent decree to stay their effective dates so that if the D.C. Circuit issues a decision in *Wheeler* striking down the 2020 determination, EPA could quickly comply with the consent decree.

But Ramos says he “is hesitant to order the EPA to spend time and resources on regulations that may never need to be enforced,” and accordingly, the district court declines NRDC’s request.

Inside EPA: Environmentalists press 9th Circuit to dismiss nutrients case as moot

Environmentalists in Montana are reiterating their argument that EPA and the state’s appeal of a closely watched nutrients water quality standards case is moot, but that if the federal appeals court overseeing the suit decides to rule on the merits, it should find that water quality standards cannot be based on cost.

“This case is a textbook example of a moot case, where this Court can no longer give effective relief because” EPA and Montana “voluntarily resolved the matter,” Upper Missouri Waterkeeper says in its Oct. 16 final brief to the U.S. Court of Appeals for the 9th Circuit.

EPA and Montana’s “arguments offer a Gordian knot of twisted reasoning and disclaimers, but the simple fact remains that the” numeric nutrient criteria have been voided by the actions of EPA and the state, and the subject of the appeal -- a variance from those numeric criteria -- is moot, the environmental group adds.

EPA and Montana “cannot escape the consequences of the train of events they voluntarily set in motion” when they failed to seek a stay of an order by the U.S. District Court for the District of Montana invalidating a variance to stringent numeric nutrient standards in the state and ordering its revision, Upper Missouri Waterkeeper says.

The district court’s order triggered a state law provision that eliminated the numeric criteria and reinstated narrative criteria, a provision that Waterkeeper is challenging in related litigation in federal district court in Montana and which the state along with municipal and industry groups is defending.

Montana was the first state to issue strict numeric nutrient criteria along with a statewide variance.

Waterkeeper urges the 9th Circuit to dismiss EPA and Montana's appeal as moot, but says that if the court reaches the merits, it should "reverse the district court's holding on the specific issue that water quality standards can be based on cost and affordability as opposed to the protection of designated uses."

EPA maintains in a Sept. 21 brief that the 9th Circuit can grant effective relief because if the appeals court were to vacate the district court's order, the ruling would restore the variance providing meaningful relief for EPA, Montana and a coalition of municipal and industrial parties that have all appealed the district court ruling.

And the Montana League of Cities and Towns along with the National Association of Clean Water Agencies says in an Oct. 6 brief that "Waterkeeper cannot meet the heavy burden of establishing mootness on appeal." The municipal groups agree with EPA that overturning the district court's ruling will restore the 2017 variance and the underlying water quality standards and say the "incompatible positions that Waterkeeper has taken regarding the effect" of the state-law provisions eliminating the numeric standards in this appeal versus its pending case in district court "belie Waterkeeper's mootness arguments."

"Additionally, the principle of judicial estoppel should apply to such gamesmanship," the municipal groups say, explaining that they rely on Clean Water Act variances to provide time to implement adaptive management approaches to improve water quality.

The State Journal-Register: EPA announces \$113 million for Illinois water infrastructure

Using City Water, Light and Power's lead service pipe replacement project as a backdrop, officials from the U.S. Environmental Protection Agency on Tuesday announced more than \$113 million to modernize water infrastructure in Illinois.

"With these funds, Illinois will provide low-interest financing to communities across the state for costs associated with planning, design, and construction of eligible wastewater and drinking water infrastructure for projects and activities to protect human health," said EPA Region 5 Administrator Kurt Thiede.

Thiede added that the program, Drinking Water State Revolving Loan Fund, is "one of the many tools that EPA can offer our state partners so that they can upgrade their water infrastructure and reduce lead exposure."

Accompanied by Springfield Mayor Jim Langfelder and U.S. Rep. Rodney Davis, R-Taylorville, Thiede made the announcement at the corner of 15th and Stuart streets on the city's east side, where CWLP is in the process of replacing 150 lead service pipelines.

Earlier this year, the utility was awarded a 100 percent forgivable \$888,000 loan through the fund for the first phase of the project, which is expected to wrap up by summer of 2021.

The funds are used to assist low-income homeowners in the replacement of the customer-owned portion of the service line along with contracting work to repair streets, sidewalks and landscaping affected by construction. CWLP workers are replacing the city's portion of the service lines.

Tuesday's announcement yielded no new direct investment in CWLP's lead service line project. But utility water division manager Todd LaFountain said an application for an additional \$4 million from the revolving loan fund is in.

Those additional funds, if awarded, would be used to replace an additional 600 lead service lines by 2023.

CWLP officials estimate that about 10,000 of the city's 53,000 service connections have lead pipes. The city switched from using lead to copper for service lines around 1930, meaning that nearly all remaining lead service lines are in older city neighborhoods.

The utility is prioritizing home day cares, low-income areas and areas where Public Works has road overlays and sewer replacement work scheduled.

LaFountain said Springfield residents have nothing to worry about — their water is safe to drink, but the replacement project is simply “a proactive measure” to ultimately get to “no lead service lines within our distribution system.”

Replacing all the city's lead service lines is a process that will take decades, LaFountain acknowledged.

The announcement also put on display the benefits of incumbency with Davis — locked in one of the closest congressional races in the country against Democratic challenger Betsy Dirksen Londrigan — able to tout his ability to ‘bring home the bacon’ one week ahead of the election.

“This funding will provide for safe, quality drinking water for residents across Illinois,” Davis said. “The investments we make today in water infrastructure will pay dividends for decades to come. Healthier children, families, and communities will be the outcome. The projects range from reducing exposure to lead to improving overall water quality and I look forward to seeing them completed.”

Londrigan, his opponent, said the funding was a positive step, but worried about the overall direction the EPA has taken under President Donald Trump's administration.

“I believe clean water, clean air and clean land are basic human rights,” Londrigan said in a statement. “This is a positive and helpful step, but the EPA has been under constant attack from the current administration and we must fight to strengthen and fully fund this important agency. In Congress, I will support a comprehensive infrastructure plan to bring good paying jobs to Central Illinois to fix our roads, bridges, waterways, and strengthen our local economies.”

Later in the day, Davis and Thiede appeared together at an event with the Illinois Farm Bureau in Decatur.

Thiede denied that politics had anything to do with the timing or location of Tuesday's announcement.

“What today is about is making an important water announcement ... this is just doing business at a time of year where there are other things going on,” Thiede said.

Langfelder said “it is what it is” with regards to the timing.

Langfelder, a Democrat, praised Davis for “all you've done for Springfield and continue to do,” adding that he “never lost sight of where you came from.”

But the mayor, who said he plans to vote in person on Election Day, declined to say whether he supports Davis or Londrigan.

“Well, I learned from my father, he said you shouldn't divulge your vote, ever,” Langfelder said.

In all, Langfelder said he appreciated Thiede and Davis' appearances in the capital city.

"That's very important that our representatives in Washington do come and see where the tax dollars that they're in charge of actually come through on fruition," Langfelder said. "And you could not get a better project than a water project."

Ward 2 Ald. Shawn Gregory was not present despite the announcement taking place in his ward. Though CWLP officials said all 10 aldermen were invited, Gregory said he "didn't get the call."

In addition to the new loan funds, the EPA also announced \$1 million for the Illinois Department of Public Health. The funds will be used to sample for lead in drinking water in the state's day care facilities and schools.

Chicago-based Elevate Energy also was awarded a \$2 million grant to help Chicago childcare facilities understand the impacts of lead exposure, conduct testing and understand the importance of validation testing, and implement mitigation actions.

Pacific Business News: Hawaii awarded \$23.3M to protect, improve water infrastructure

Hawaii was awarded more than \$23.3 million in federal funding from the United States Environmental Protection Agency to protect and support the state's water infrastructure, EPA officials announced Monday.

The \$23,319,000 in aid comes from the EPA's State Revolving Funds, which assists states, tribes and territories with infrastructure projects that help protect surface water and provide safe drinking water to communities across the country. The Hawaii Department of Health — which assists wastewater and water systems to maintain or bring them into compliance with state and federal clean water and drinking water requirements — will receive and administer the funds.

The state Revolving Funds programs function like infrastructure banks by providing low-interest loans for drinking water and clean water infrastructure projects. As the loan principal and interest are repaid over time, it allows the state's Drinking Water State Revolving Fund and Clean Water State Revolving Funds to be recycled. As money is returned to the state's revolving loan fund, the state makes new loans to other eligible recipients.

This year, the EPA awarded \$1.6 billion nationwide in new federal grant funding for the Clean Water State Revolving Fund, including \$12.3 million that was disbursed to Hawaii. The funds can be used for a wide range of water infrastructure projects including; modernizing aging wastewater infrastructure, implementing water reuse and recycling and addressing stormwater.

"EPA is delivering on its commitment to modernize water infrastructure and improve public health and environmental protections in the Pacific Southwest," said EPA Pacific Southwest Regional Administrator John Busterud in a statement. "EPA's \$346.8 million contribution to the state Revolving Funds in the region will enable more communities to make the investments needed to ensure safe drinking water and sanitation."

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